Supreme Court, U.S.
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No. 03-923

In the Supreme Court of the United States

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

ROY I. CABALLES,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the Fourth Amendment requires reasonable, articulable suspicion to justify using a drug-detection dog to sniff a vehicle during a legitimate traffic stop.

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The opinion of the Illinois Supreme Court is published at 207 Ill. 2d 504, 802 N.E.2d 202 (Ill. 2003), and is on pages 1a through 10a of the Appendix to the Petition for Certiorari (Pet. App.). The judgment of the Illinois Appellate Court is reported at 321 Ill. App. 3d 1063, 797 N.E.2d 250 (Table) (Ill. App. 3d Dist. 2001). The unpublished opinion of the Illinois Appellate Court is available at Pet. App. 11a–19a. The Circuit Court for the Thirteenth Judicial Circuit, LaSalle County, issued an unreported, oral ruling; the text of this ruling is available at Pet. App. 20a–27a.

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

Illinois State Police Trooper Daniel Gillette stopped respondent Roy Caballes on November 12, 1998, for driving 71 miles per hour on a portion of Interstate 80 where the speed limit was 65 miles per hour. (Pet. App. 1a). After initially stopping Caballes, the trooper instructed him to move his car further out of the way of traffic, asked Caballes to sit in the squad car, and informed him that he was only going to issue Caballes a warning ticket. (Pet. App. 2a). The trooper called a police dispatcher to deter-

mine whether Caballes's driver's license was valid, and to check for outstanding warrants. *Id.*

While waiting for results of the check, Trooper Gillette queried Caballes about his destination and his business attire. After being informed that Caballes's driver's license was valid, Trooper Gillette continued to question Caballes, asking him about his criminal history, and he requested the dispatcher to conduct a criminal background check. Subsequently, the trooper asked Caballes for permission to search his vehicle. Caballes refused. (Pet. App. 2a). Next, Trooper Gillette asked whether Caballes had ever been arrested, and Caballes answered that he had not. The dispatcher then reported that Caballes had two prior arrests for distribution of marijuana. Trooper Gillette then discussed an unrelated matter with another trooper on his radio. (Pet. App. 2a-3a). Trooper Gillette testified that he had still not completed writing the warning ticket for speeding when another trooper arrived with a drug-detection dog. (Pet. App. 3a).

The second trooper walked the drug-detection dog around Caballes's car, and the dog alerted at the trunk. (Pet. App. 3a). The police officers searched the trunk of the car and found marijuana. (Pet. App. 3a). Caballes was arrested and charged with one count of cannabis trafficking. (Pet. App. 3a).

At trial, Caballes moved to suppress the drug evidence found in the trunk of his car. (Pet. App. 3a). The trial court denied the motion and, after a bench trial, found Caballes guilty. (Pet. App. 3a). Caballes appealed the trial court's decision not to suppress the evidence, and the Illinois Appellate Court affirmed. (Pet. App. 3a).

The Illinois Supreme Court reversed the decision of the Illinois Appellate Court, holding that the behavior of the state troopers in expanding the scope of the traffic stop was unreasonable under the standards articulated in *Terry v. Ohio*, 392 U.S. 1 (1968). (Pet. App. 4a, 6a). As Caballes did not dispute the proper initiation of the traffic stop, the court based its holding on the second portion of the *Terry* test, which asks "whether [the expansion in the scope of the traffic stop] was reasonably related in scope to the circumstances which justified the interference in the first place." (Pet. App. 4a).

In holding that the expansion in scope of the traffic stop was not reasonably related to the initial reason for the stop, the court relied on its previous "similar" holding in *People v. Cox*, 202 Ill.2d 462, 782 N.E.2d 275 (Ill. 2002), *cert. denied*, 123 S. Ct. 2574 (2003). (Pet. App. 4a, 5a). The Court held that Caballes's traffic stop suffered from defects similar to those at issue in *Cox*. (Pet. App. 4a, 5a). The police officers did "not offer[ ] sufficient justification for implementing a canine sniff" (Pet. App. 4a) and "further detaining defendant." The police officers had "nothing more than a vague hunch that [Caballes] may have been involved in possible wrongdoing." (Pet. App. 5a). Based on these defects, the Illinois Supreme Court held that "the trial court should have granted defendant's motion to suppress the evidence" because the police officers "unjustifiably enlarg[ed] the scope of a routine traffic stop." (Pet. App. 5a).

REASONS FOR DENYING THE PETITION

Petitioner argues (Pet. 5, 8, 9) that certiorari should be granted to review the Illinois Supreme Court's holding that a canine sniff is a search within the meaning of the Fourth Amendment, requiring reasonable, articulable suspicion as justification. But, the Illinois Supreme Court held no such thing. Rather, the Court's decision instead reflects a fact-based application of a widely followed test adopted from *Terry v. Ohio* to govern the duration and scope of traffic stops under the Fourth Amendment. Because this case is a

poor vehicle for exploring the issues raised in the petition, the petition of certiorari should be denied.

I. THE ILLINOIS SUPREME COURT BELOW UNCONTROVERSIALLY HELD THAT PROLONGATION OF A ROUTINE TRAFFIC STOP—INCLUDING ADDITIONAL QUESTIONING, A CRIMINAL BACKGROUND CHECK, AND A CANINE SNIFF—VIOLATED THE FOURTH AMENDMENT'S BAN ON UNREASONABLE SEIZURES, NOT THAT A CANINE-SNIFF ITSELF WAS A SEARCH WITHIN THE MEANING OF THE FOURTH AMENDMENT

Petitioner fundamentally errs in arguing that the Illinois Supreme Court held a canine-sniff to be a search under the Fourth Amendment. Rather, the court below held that its decision was based "on the unjustified expansion of the scope of the stop" (Pet. App. 1a, 5a), not on the nature of a canine sniff *vel non*. The court relied on this Court's test in *Terry* to frame the inquiry, asking whether the police officers' conduct in this case "was reasonably related in scope to the circumstances which justified the interference in the first place." (Pet. App. 4a). In concluding that there had been an "unjustified expansion of the scope of the stop," (Pet. App. 5a), the court followed *Terry* and the many federal appellate and state courts that apply *Terry* to the question of whether the scope of a routine traffic stop has been impermissibly enlarged.

The only conceivable issue arising from the case below is whether *Terry* prohibits law enforcement authorities from expanding the scope of investigations after traffic stops as well as prolonging the traffic stops themselves. Any ambiguity in the Illinois Supreme Court's decision below arises from the court's use of the term "scope", which refers under Illinois precedent both to the duration of the stop and

to the nature of the investigation. Illinois courts consider both aspects of scope in considering the constitutionality of law enforcement actions after a traffic stop. There is no ambiguity, however, but that the court invalidated the search due to the expanded scope of the search, not because the canine-sniff was a search.

The Illinois Supreme Court's intent in this case can be ascertained from its reliance (Pet. App. 3a) on its prior decision in *Cox*. The court explained that it "recently decided a similar issue" in that case. In *Cox*, police officers pulled the defendant over for not having a rear registration light. *Id*. at 464. A canine unit was called to the traffic stop and arrived 15 minutes later while the officer was still writing the traffic ticket. *Id*. A police officer walked the canine around the defendant's car, and the dog alerted the officer to the presence of drugs in the vehicle. *Id*. at 464-65. The court found that, had the traffic stop not been impermissibly extended, the defendant would have left the scene before the canine unit arrived. *Id*. at 470.

In *Cox*, the court—as in this case—used a *Terry* analysis to determine whether the extended detention of the defendant was justified. *Id*. at 466-67. The court explained that, to fulfill the requirement that the detention be reasonably related in scope, a detention must be "temporary and last no longer than is necessary to effectuate the purpose of the stop." *Id*. at 467 (quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983) (plurality opinion). Thus, the Illinois court interpreted the scope requirement from *Terry* as dealing directly with the length of the stop. Using the above *Terry* analysis, the Illinois Supreme Court in *Cox* found that, although the officer was still writing the ticket when the canine unit arrived, the detention time for such a routine minor traffic stop should have already concluded. *Id*. at 470 (citing *People v. Luna*, 322 Ill. App. 3d 855, 859, 752 N.E.2d 477 (Ill. App. 2d Dist. 2001) ("An officer may not stall at the

scene of a traffic stop until a drug-sniffing dog arrives and creates probable cause to conduct a search of a vehicle"). Although the Court refused to impose a rigid time limitation on the duration of a traffic stop, it determined that, under the facts of the case, the officer's decision to prolong the detention violated the Fourth Amendment.

Petitioner apparently argues (Pet. 4) that *Cox* also held that a dog sniff is a search under the Fourth Amendment. The court in *Cox*, however, never so held. It did, however, suggest that it would take into account all facts surrounding the seizure, including whether the scope of the investigation had changed. The court stated that, to expand the scope of the stop, whether in terms of duration or change in the nature of the investigation, the officer must have "specific and articulable facts." *Id*. at 470-71. If there are no specific and articulable facts that would justify expanding the scope of the traffic stop, the extended investigation is unconstitutional. *Id*. at 470.

But, the key element in *Cox* was that, in the court's view, there were no facts that "reasonably warranted an *extended detention* . . ." and that the "defendant's detention . . . was *overly long*." *Id*. at 470-71 (emphasis added). The dissent in *Cox* understood this to be the holding as well when it asserted that the majority failed to address the issue specifically raised on appeal: whether a canine-sniff is a search under the Fourth Amendment. *Id*. at 472. Indeed, the dissent vigorously accused the majority of ignoring the issue being appealed and instead basing its holding on the "spontaneous realization that the 15-minute traffic stop was unnecessarily and illegally long."

In this case, as in *Cox*, the troopers extended the duration of the traffic stop. After pulling the defendant over for going six miles over the speed limit, the trooper informed respondent that he would only get a warning. Nonetheless, the trooper requested a dispatcher to check whether respon-

dent's license was valid and whether he had any outstanding warrants. The trooper questioned Mr. Caballes about his travel plans and wardrobe. Even after determining that he had no warrants outstanding and that his driver's license was valid, the trooper further questioned the defendant about his criminal history and asked to search his car. Subsequently, the trooper ordered a criminal history check, still keeping respondent in the squad car. Next, the trooper discussed an unrelated matter with a colleague over the radio. At no time did petitioner suggest that Mr. Caballes was free to leave. Only after the questioning, the background checks, continued questioning, and the unrelated radio conversation, did the officer apparently begin writing the warning ticket. (Pet. App. at 2a). The court below may well have concluded that the officer was stalling to permit the canine unit more time to arrive. At the very least, there was no legitimate reason to prolong the detention after the officer determined that Mr. Caballes had a valid driver's licence and no outstanding warrants. As the court noted, petitioner's proffered justifications "cannot serve as a reasonable basis for *further detaining* defendant." *Id*. at 5a. (emphasis added). *See People v. Bunch*, 207 Ill.2d 7, 17, 796 N.E.2d 1024 (Ill. 2003) (seizure invalidated because officer extended defendant's detention by questioning him after purpose of stop was completed); *People v. Gherna*, 203 Ill.2d 165, 186, 784 N.E.2d 799 (Ill. 2003) (once officer had completed reason for stop, it was inappropriate to continue the detention); *People v. Brownlee*, 186 Ill.2d 501, 521, 713 N.E.2d 556 (Ill. 1999) (seizure invalidated because following completion of traffic stop, officers continued detention of defendants for several minutes).

To escape the logic of *Cox*, petitioner asserts (Pet. 9) that "the court reached the nonsensical and demonstrably incorrect conclusion that a Fourth Amendment non-event plus a legitimate traffic stop equals a Fourth Amendment

violation." Petitioner's argument is misconceived. Even though the passage of time by itself is not a Fourth Amendment "event", in petitioner's language, prolongation of a seizure can itself violate the Fourth Amendment. Indeed, *United States v. Place* so holds—"The length of the detention of respondent's luggage alone precludes the conclusion that the seizure was reasonable in the absence of probable cause." 462 U.S. 696, 709 (1983).

Furthermore, federal courts have deployed tests similar to that of the court below in determining the legitimacy of expansions of routine stops, whether through canine-sniffs, criminal history checks, or questioning unrelated to the initial stop. Courts have analyzed traffic stops as analogous to *Terry* investigative stops. *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984). A number of courts have held that, lacking reasonable suspicion or consent, expansion of the scope of investigation at a traffic stop violates the Fourth Amendment when it unreasonably extends the duration of the stop. *U.S. v. Jones*, 269 F.3d 919, 925 (8th Cir. 2001); *U.S. v. Pruitt*, 174 F.3d 1215, 1220 (11th Cir. 1999); *U.S. v. Mesa*, 62 F.3d 159, 162 (6th Cir. 1995). In these cases, as in the present case, the courts have not ruled that any of the investigative techniques—canine-sniffs, background checks, or questioning—do or do not require reasonable suspicion as a matter of law, but rather make an inquiry into the specifics of the case to determine whether extending the duration of a stop is reasonable under the circumstances.[1]

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[1] There is no basic conflict among the courts of appeals as to whether prolonging the duration of a seizure after a traffic stop violates the Fourth Amendment. All agree that the inquiry, framed by *Terry*, depends upon the facts of each case. Petitioner's suggestion of a conflict (Pet. 7 n.*), is unpersuasive—courts have merely relied on different factors in determining whether a particular stop was too long. The court of appeals' decision in

(continued...)

For instance, in *Pruitt*, an officer stopped a car for speeding and asked the driver to accompany him to his car so that he could write up the ticket. 174 F.3d at 1217. After obtaining the driver's license and registration, rather than writing the ticket immediately, the officer asked a number of questions, unrelated to the speeding violation, to the driver and passengers. *Id.* at 1218. The officer requested permission to search the car, which was denied. *Id.* The officer told the driver that more time was required to complete the ticket, then requested and waited for a canine unit. *Id.* The canine sniff was conducted nearly a half hour after the initial stop. *Id.* The *Pruitt* court found that lengthening the detention beyond the time necessary to effectuate the purpose of the stop, in this case the issuance of a speeding ticket, constituted a Fourth Amendment violation in the absence of reasonable suspicion or consent. *Id.* at 1220.

Similarly, in the present case, the trooper, after obtaining the necessary information for the warning and having his request for permission to search the car denied, delayed completing the warning citation by waiting for a criminal background check, asking further questions, and talking on the radio concerning an unrelated matter. In neither *Pruitt* nor the present case is the court's ruling based strictly upon the canine-sniff. Rulings like these on the legitimacy of the expansion of the scope of a traffic stop are based upon a duration test that considers the specific facts and the totality of the circumstances in each case and does not issue an absolute rule of law regarding the legitimacy of canine-

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(...continued)
United States v. Hunnicutt, 135 F.3d 1345, 1350 (10th Cir. 1998), cited by petitioner, relied instead on the fact that police officials had reasonable suspicion to conduct the canine-sniff.

sniffs in routine traffic stops.[2] Viewed in this light, the Illinois Supreme Court's decision regarding the prolonged duration of the seizure is not only unexceptional, it is clearly consistent with other courts' disposition of similar cases.

II. TO THE EXTENT THAT THE ILLINOIS SUPREME COURT'S DECISION RELIED IN PART ON THE FACT THAT THE POLICE OFFICERS IMPERMISSIBLY CHANGED THE NATURE OF THE INVESTIGATION THROUGH THE QUESTIONING, BACKGROUND CHECK, AND CANINE SNIFF, THIS CASE DOES NOT WARRANT FURTHER REVIEW BOTH BECAUSE THE PETITIONER HAS NOT RAISED THIS CLAIM AND BECAUSE THE DECISION, IN ANY EVENT, CAN BE JUSTIFIED SOLELY ON THE BASIS OF THE EXTENDED DURATION OF THE SEIZURE

As previously discussed, there is language in the Illinois Supreme Court's opinion suggesting that its decision was based not only on extension of the traffic stop but also on the fact that the trooper erred in changing the nature of the stop. The court remarked that the police officers "impermissibly broadened the scope of the traffic stop . . . into a drug investigation." (Pet. App. 4a). In prior cases, including *Cox*, the court has stated that the police may not alter the basic purpose of a seizure after a traffic stop.

For instance, in *People v. Gonzalez*, 204 Ill.2d 220, 222 (Ill. 2003), the defendant was a passenger in a car that was

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[2] Other state court cases have also adopted a *Terry* analysis to assess whether the duration of the stop was excessive. *See, e.g.*, *Damato v. State*, 64 P.3d 700 (Wyo. 2003); *State v. Carlson*, 15 P.3d 893 (Mont. 2000); *State v. Fields*, 662 N.W.2d 242 (N.D. 2003).

pulled over for not having a front license plate. While one officer questioned the driver, another officer questioned the defendant passenger and asked for his identification. *Id.* The exchange subsequently led the officer to discover drugs on the defendant. The issue before the Court was whether the officer's questioning violated the Fourth Amendment by impermissibly changing the scope of the seizure. The Illinois Supreme Court clarified that, in its view, *Terry* requires both that the traffic stop be limited in duration and that the fundamental nature of the stop not be changed unless the officer has specific and articulable facts. *Id.* at 233 (quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983) to the effect that "an investigative detention must be temporary and last no longer than is necessary . . . . Similarly, the investigative methods . . . should be the least intrusive means . . . to verify or dispel the officer's suspicion in a short period of time"). The Illinois Supreme Court's rule serves to restrain overreaching by police officers, and limits the potential for discriminatory application of the laws.

Nonetheless, comparing *Caballes* to *People v. Harris*, 207 Ill.2d 515, 802 N.E.2d 219 (Ill. 2003), decided the same day, makes it clear that duration is a critical component in the case below. The court in *Harris* concluded that there was no problem with the duration of the stop, but held that, when the officer proceeded to do a warrant check on a passenger in a vehicle pulled over for a minor traffic violation, the fundamental nature of the traffic stop impermissibly changed. The court cited *Gonzalez*, which had forbidden police officers from parlaying a traffic stop into a drug investigation. By contrast, in *Caballes* the court both explicitly (Pet. App. 5a) and implicitly relied on duration, and its failure to cite either *Gonzalez* or *Harris* further suggests that *Caballes* stands principally as a duration case.

Moreover, petitioner has not petitioned for certiorari to examine whether law enforcement officers can change the

the facts of this case, petitioner's reluctance is understandable—the court's decision below is amply supported by a duration analysis. As a consequence, this case would make a poor vehicle to explore whether the Fourth Amendment prohibits law enforcement authorities from changing the nature of the investigation after a traffic stop independently of prolonging the seizure itself.

In any event, no matter how construed, there is nothing in the opinion that indicates that the Court below concluded that a canine-sniff was a search under the Fourth Amendment. The Court tellingly never stated that a canine-sniff was a search, and relied on *Cox*, which similarly also never held that a canine-sniff was a search. Furthermore, the court below never cited *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000), or *Place*, in its decision. The omission of these cases—or, indeed, of any case analyzing whether a dog-sniff is a search—strongly suggests that petitioner's characterization of the Court's opinion is erroneous.

In sum, this case does not present the opportunity to decide whether a canine-sniff is a search. No reasonable reading of the Court's opinion supports petitioner's construction, and the court's reliance on *Cox* undermines any such notion.

Rather, the Court's decision below represents a fact-based inquiry into whether the police officer's extension of the stop violated the Fourth Amendment. There is no disagreement among the lower courts that the *Terry* standard governs such cases. Given the particular facts at hand suggesting delay—the questioning, the criminal background check, additional questioning, and an unrelated call—reviewing this case is unlikely to provide any clarification of application of the *Terry* standard that would aid lower courts.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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